

AMENDED IN ASSEMBLY APRIL 7, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 225

Introduced by Assembly Member Negrete McLeod

February 3, 2005

An act to amend Section 650 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 225, as amended, Negrete McLeod. Electronic prescription information.

Existing law relative to insurance fraud makes it a crime for healing arts practitioners to receive money or other consideration for, or to engage in various related activities with respect to, the referral of patients, clients, or customers to any person, with certain exceptions.

This bill would, *upon the effective date of specified regulations adopted by the Secretary of the United States Department of Health and Human Services pursuant to the Medicare Prescription Drug, Improvement and Modernization Act of 2003*, exempt from these provisions ~~a licensed health care facility or licensed health care professional prescribing or dispensing medication~~ *specified entities that receives receive* nonmonetary remuneration necessary and used solely to receive and transmit electronic prescription information, *under certain conditions*.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 650 of the Business and Professions Code is amended to read:

650. (a) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code, the offer, delivery, receipt, or acceptance by any person licensed under this division or the Chiropractic Initiative Act of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest or coownership in or with any person to whom these patients, clients, or customers are referred is unlawful.

~~The~~
(b) The payment or receipt of consideration for services other than the referral of patients which is based on a percentage of gross revenue or similar type of contractual arrangement shall not be unlawful if the consideration is commensurate with the value of the services furnished or with the fair rental value of any premises or equipment leased or provided by the recipient to the payer.

~~Except~~
(c) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2, it shall not be unlawful for any person licensed under this division to refer a person to any laboratory, pharmacy, clinic (including entities exempt from licensure pursuant to Section 1206 of the Health and Safety Code), or health care facility solely because the licensee has a proprietary interest or coownership in the laboratory, pharmacy, clinic, or health care facility; provided, however, that the licensee's return on investment for that proprietary interest or coownership shall be based upon the amount of the capital investment or proportional ownership of the licensee which ownership interest is not based on the number or value of any patients referred. Any referral excepted under this section shall be unlawful if the prosecutor proves that there was no valid medical need for the referral.

1 ~~Except~~

2 ~~(d) (1) Except as provided in Chapter 2.3 (commencing with~~
3 ~~Section 1400) of Division 2 of the Health and Safety Code and in~~
4 ~~Sections 654.1 and 654.2, it shall not be unlawful for a licensed~~
5 ~~health care facility, or a licensed health care professional~~
6 ~~prescribing or dispensing medication, to receive nonmonetary~~
7 ~~remuneration necessary and used solely to receive and transmit~~
8 ~~electronic prescription information, as provided in Section 11164~~
9 ~~of the Health and Safety Code. Nonmonetary remuneration~~
10 ~~includes hardware, software, information technology, and~~
11 ~~training services for purposes of facilitating the electronic~~
12 ~~transmission of prescription information. to provide nonmonetary~~
13 ~~remuneration, in the form of hardware, software, or information~~
14 ~~technology and training services, necessary and used solely to~~
15 ~~receive and transmit electronic prescription information in~~
16 ~~accordance with the standards set forth in Section 1860D-4(e) of~~
17 ~~the Medicare Prescription Drug, Improvement and~~
18 ~~Modernization Act of 2003 (42 U.S.C. Sec. 1395w-104) in the~~
19 ~~following situations:~~

20 ~~(A) In the case of a hospital, by the hospital to members of its~~
21 ~~medical staff.~~

22 ~~(B) In the case of a group medical practice, by the practice to~~
23 ~~prescribing health care professionals that are members of the~~
24 ~~practice.~~

25 ~~(C) In the case of Medicare prescription drug plan sponsors~~
26 ~~or Medicare Advantage organizations, by the sponsor or~~
27 ~~organization to pharmacists and pharmacies participating in the~~
28 ~~network of the sponsor or organization and to prescribing health~~
29 ~~care professionals.~~

30 ~~(2) The exceptions set forth in this subdivision are adopted to~~
31 ~~conform state law with the provisions of Section 1860D-4(e)(6)~~
32 ~~of the Medicare Prescription Drug, Improvement and~~
33 ~~Modernization Act of 2003 (42 U.S.C. Sec. 1395w-104) and are~~
34 ~~limited to drugs covered under Part D of the federal Medicare~~
35 ~~Program that are prescribed to Part D eligible individuals (42~~
36 ~~U.S.C. Sec. 1395w-101).~~

37 ~~(3) The exceptions set forth in this subdivision shall not be~~
38 ~~operative until the regulations required to be adopted by the~~
39 ~~Secretary of the United States Department of Health and Human~~
40 ~~Services, pursuant to Section 1860D-4(e) of the Medicare~~

1 *Prescription Drug, Improvement and Modernization Act of 2003*
2 *(42 U.S.C. Sec. 1395W-104) are effective.*

3 ~~“Health~~

4 *(e) “Health care facility” means a general acute care hospital,*
5 *acute psychiatric hospital, skilled nursing facility, intermediate*
6 *care facility, and any other health facility licensed by the State*
7 *Department of Health Services under Chapter 2 (commencing*
8 *with Section 1250) of Division 2 of the Health and Safety Code.*

9 ~~A~~

10 *(f) A violation of this section is a public offense and is*
11 *punishable upon a first conviction by imprisonment in the county*
12 *jail for not more than one year, or by imprisonment in the state*
13 *prison, or by a fine not exceeding fifty thousand dollars*
14 *(\$50,000), or by both that imprisonment and fine. A second or*
15 *subsequent conviction is punishable by imprisonment in the state*
16 *prison or by imprisonment in the state prison and a fine of fifty*
17 *thousand dollars (\$50,000).*